IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

WP(C).No. 13888 of 2006(C)

PETITIONER:

VISHNUDAS.T.E,
S/O.P.M.ESWARAN NAMBEESAN,
"GOURINATHAN", KELOTH,
PAYYANNUR.P.O, KANNUR DISTRICT.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION,
SECRETARIAT, THIRUVANANTHAPURAM.

2. KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY THE SECRETARY,
KERALA PUBLIC SERVICE COMMISSION,
PATTOM, THIRUVANANTHAPURAM.

3. THE DEPUTY DIRECTOR OF EDUCATION,
KANNUR.

4. THE DISTRICT OFFICER,
KERALA PUBLIC SERVICE COMMISSION,
KANNUR.

BY GOVERNMENT PLEADER SMT.M.R.SREELATHA
SRI.P.C.SASIDHARAN, SC, KPSC.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the ranked list for the post of full time junior language teacher (Hindi) in Kannur District.

// True copy //

P.A. To Judge

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A.K.BASHEER, J.

W.P.(C)No.13888 OF 2006

Dated this the 25th day of July, 2007

JUDGMENT

Petitioner in this writ petition was included in the list of selected candidates for appointment to the post of HSA (Hindi) in Kannur district. Admittedly, the list expired on August 10, 2006. It is the case of the petitioner that the department had failed to report several vacancies which had arisen during the period of validity of the list. More than two or three counter affidavits and reply affidavits have been filed in this writ petition. Ultimately, it boils down the question as to whether the assertions made by the petitioner is correct or the stand taken by the department is tenable. Undoubtedly, the issues raised by the parties are in the realm of facts and facts alone. Necessarily, such issues have to be thrashed out on the basis of the records available in the office of the department concerned.

2. There is yet another aspect of the matter. It is the specific case of the petitioner that this court had issued an interim order on August 9, 2006 directing the department to

report 17 vacancies to the Commission. It is admitted by the petitioner that the above order was complied with. It is true that the department has consistently taken the stand that vacancies were not available for advice and appointment. But learned counsel for the petitioner invites my attention to a judgment rendered by Division Bench of this court in Writ Appeal No.595/1981 and submits that if in fact vacancies were available before the expiry of the list such vacancies ought to have been reported. The failure on the part of the department to report those vacancies should not be at the peril of the petitioner. Yet again, it has to be verified from the records as to whether vacancies were available for advice and appointment under the direct recruitment quota.

3. Having regard to the peculiar facts and circumstances of the case, writ petition is disposed of with a direction to respondent no.1 to call for the records, scrutinize the same and pass appropriate orders in the matter in the light of the observations made above. This shall be done within four months from the date of receipt of a copy of this judgment. Petitioner shall be afforded sufficient opportunity to be heard

before any decision is taken in the matter. Petitioner shall produce a copy of the writ petition, counter affidavits and reply affidavits along with a certified copy of the judgment before respondent no.1 for compliance.

Writ petition is disposed of as above.

A.K.BASHEER, JUDGE

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